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Identical letters dated 3 April 2013 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit herewith the text of guidelines that I have issued on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court (see annex).

The guidelines set out the policy of the Secretariat on contacts between United Nations officials and persons who are the subject of arrest warrants or summonses issued by the Court. They have recently been redrafted and redistributed to senior officials of all units of the Secretariat, including field presences and operations, and of the offices, programmes and funds.

I should be grateful if you would bring the present letter and its annex to the attention of the members of the General Assembly and the Security Council.

(*Signed*) **BAN** Ki-moon

13-28047 (E) 090413

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Annex

Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court

The present guidance applies to all parts of the Secretariat, including Secretariat units and offices, programmes and funds.

Background

International Criminal Court proceedings are initiated by the issuance of either an arrest warrant or a summons to appear. Both documents contain, inter alia, reference to the crimes which the person is alleged to have committed, as well as a short statement of the facts which are alleged to constitute those crimes.

The Pre-Trial Chamber issues an arrest warrant in response to an application made by the Prosecutor when the Chamber feels that there are reasonable grounds to believe that the person has committed a crime under the jurisdiction of the International Criminal Court, and when the Chamber finds it necessary that the person be arrested. States parties to the Rome Statute of the International Criminal Court are under an obligation to enforce an arrest warrant issued by the Court.

A summons to appear is an alternative to an arrest warrant and may be sought by the Prosecutor where there are reasonable grounds to believe the accused person has committed the alleged crimes and when the summons is sufficient to ensure the person will appear before the Court. To date the International Criminal Court has issued nine summonses to appear and each of the accused persons summoned have appeared voluntarily before the Court.

(1) Persons subject to warrants of arrest

- Contacts between United Nations officials and persons who are the subject of warrants of arrest issued by the International Criminal Court should be limited to those which are strictly required for carrying out essential United Nations mandated activities.
- The presence of United Nations officials at any ceremonial or similar occasion that is attended by any such person should be avoided. Standard courtesy calls should not be made.
- When contacts are absolutely necessary, an attempt should be made, where possible, to interact with individuals of the same group or party who are not the subject of an International Criminal Court arrest warrant.

Commentary

1. As a general rule, there should be no meetings between United Nations officials and persons who are the subject of warrants of arrest issued by the International Criminal Court.

2. There should be no ceremonial meetings with such persons and standard courtesy calls should not be paid on them. The same holds true of receptions, photo opportunities, attendance at national day celebrations and so on.

3. If the person holds a position of authority in a State, every effort should be made to meet and liaise with individuals other than the person subject to a warrant of arrest in order to conduct business.

4. This being said, there may still be a need, in exceptional circumstances, to interact directly with a person who is the subject of an International Criminal Court arrest warrant. Where this is an imperative for the performance of essential United Nations mandated activities, direct interaction with such a person may take place to the extent necessary only.

5. The decision as to whether contact is strictly required in order to carry out United Nations mandated activities is an operational one, which is to be made in the light of a careful consideration of all the circumstances.

6. It may be important for the Secretary-General and Deputy Secretary-General, from time to time, to have direct contact with such a person, in order to address fundamental issues affecting the ability of the United Nations and its various offices, programmes and funds to carry out their mandates in the country concerned, including vital matters of security.

7. It can be anticipated that persons who are the subject of arrest warrants issued by the International Criminal Court may deliberately seek to meet with United Nations officials in order to demonstrate their contempt for the Court and try to undermine its authority. While the United Nations and the International Criminal Court are separate organizations, each with its own mandate, the two organizations share the objective of putting an end to impunity for the most serious crimes of international concern. Furthermore, the Relationship Agreement between the United Nations and the International Criminal Court requires the United Nations to refrain from any actions that would frustrate the activities of the Court and its various organs, including the Prosecutor, or undermine the authority of their decisions.

(2) Persons subject to summonses to appear

- United Nations officials may interact without restrictions with persons who are the subject of a summons to appear issued by the International Criminal Court and who are cooperating with the Court.
- In the event that such a person ceases to cooperate with the Court and the Prosecutor seeks the issuance by the Court of a warrant for his/her arrest, the guidance on persons subject to warrants of arrest set out in (1) above should be followed.

Commentary

1. Interactions between United Nations officials and a person who is the subject of a summons to appear and who is complying with that summons and cooperating with the International Criminal Court may carry on without restrictions. Such interactions do not undermine the authority of the Court.

2. This changes if the person concerned ceases to comply with the summons and to cooperate with the Court.

(3) Information

- Information on which individuals are the subject of warrants of arrest and which are the subject of summonses to appear may be obtained from the website of the International Criminal Court (www.icc-cpi.int) or from the focal point for the Court in the Office of Legal Affairs.